TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 92

THE UNITED STATES, APPELLANT

vs.

WABASH RAILWAY COMPANY

APPEAL FROM THE COURT OF CLAIMS

FILED JUNE 11, 1926

(30406)

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vs.

WABASH RAILWAY COMPANY

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1 In Court of Claims

No. C–74

WABASH RAILWAY COMPANY

v.

THE UNITED STATES

I. *Petition*

Filed Mch. 17, 1923

To the Honorables, the Chief Justice and Judges of the Court of Claims:

Petitioner respectfully represents unto Your Honors the following facts:

I

Petitioner is a corporation organized and existing under the laws of the State of Indiana, and has always been loyal to the United States and has never voluntarily aided or abetted its enemies.

For many years petitioner has operated a line of railways in the State of Indiana and other States, doing business as a common carrier of passengers and freight for hire and reward under tariffs issued by itself and its connections duly published and filed with the Interstate Commerce Commission according to law.

II

That the United States Government, in paying for railroad transportation, is entitled to the lowest rates open to the public
2 unless by prior arrangement lower rates are agreed upon, and that irrespective of the provisions of the military agreements hereinafter referred to, to which the Government was a party, the joining of an individual rate with a party fare rate, or any combination of such rates, is a method of fixing rates for a through passenger service which the Interstate Commerce Commission has declared to be illegal and which is forbidden to petitioner and all other railroad carriers, and which is not employed in the determination of rates to the public for a through service.

III

That at various times prior to the dates of the transportation hereinafter referred to, your petitioner, in common with other railroad carriers of the United States, entered into agreements with the Government of the United States on the subject of fares and allowances

for the transportation of military traffic, the said agreements being variously entitled "Interterritorial military arrangements," "Interterritorial military agreements," "Western military arrangement," etc. The said agreements were executed on behalf of the carriers by the duly authorized agents of the Southwestern, Transcontinental, and Western Passenger Associations, the Central Passenger Association, the New England Passenger Association, the Southeastern Passenger Association, and the Trunk Line Association, and on behalf of the United States by the Quartermaster General of the Army, United States War Department, the Chief of the Bureau of Navigation, United States Navy Department and the quartermaster, United States Marine Corps. Your petitioner refers to agreement between the War Department and the western carriers dated November 30, 1914, and agreement between the Navy Department and Marine Corps and the western carriers, dated June
3 18, 1915; also to agreement referred to as western military arrangement dated April 1, 1916, effective July 1, 1916, and agreement referred to as interterritorial military arrangement, dated December 28, 1916, effective January 1, 1917. All of said agreements, which were in effect during the periods hereinafter referred to and at the dates of the transportation herein described and referred to, contained certain provisions relative to the construction of net fares and allowances and the use of party fares. One of the said agreements, designated western military arrangement, dated April 1, 1916, effective July 1, 1916, contained the following provisions:

"(9) Party fares (where authorized) apply for parties traveling together on one party ticket.

"(a) Party fares may be used as factors in constructing through net fares to and from central trunk line, southeastern, and New England territories, in the understanding that the basing points shall be Chicago, St. Louis, Memphis, Vicksburg and New Orleans only. Neither two or more party fares, nor a party fare and an individual fare, east or west of the gateways named, may be combined in establishing a basing fare to or from the basing point. Party fares used to and from basing points must be authorized as one through party fare to or from such basing points, as the case may be. A party fare or an individual fare, published as one through fare to or from the basing points named, may, however, be combined with authorized individual fares east or west of such points in making through net fares between the eastern and western territories described except that where through fares of like class are published they shall be used in all cases in establishing through net fares. All fares used in establishing net fares must be lawfully on file with the Interstate Commerce Commission.

4 "(b) In the construction of net military fares having origin and destination within the territory west of and including Chicago, St. Louis, Memphis, Vicksburg, and New Orleans, party

fares to or from St. Louis and Kansas City only may be combined with party fares to and from those gateways only, and party fares to and from St. Louis to and from those gateways only. Two or more party fares, nor a party fare and an individual fare, on either side of St. Louis and Kansas City, may not be combined in establishing the basing fare to or from St. Louis or Kansas City.

"(c) Net fares established in combinations made under sections (a) and (b) apply via usual one-way ticketing routes carrying short-line fares, or via routes specifically equalizing net fares so made, but shall be restricted to usually traveled routes for military traffic from starting point to destination.

"(d) Where party fares are used in the territories and upon the bases outlined in sections (a) and (b) herein, the same shall be net cashed in the usual way via rate-making gateway only, but where such fares are used for any part of the distance in the territory west of Chicago, St. Louis, Memphis, Vicksburg and New Orleans, under sections (a) and (b) herein, the five per cent allowance to the Government shall not apply to any part of the through fare or proportion, either party or individual fare factor, so far as western carriers are concerned.

"(e) The intent of this agreement is that where through fares are published, no combinations of fares whatsoever are to be made, except as specified in sections (a) and (b) herein."

Another of the said agreements, designed interterritorial military arrangements, dated December 28, 1916, effective January 1, 1917, contained the following provisions:

"For military traffic moving from territory east of Chicago, St. Louis, Memphis, Vicksburg and New Orleans, to territory west thereof, or vice versa, authorized party fares to and from the gateways named may be used in the construction of through net fares, in the understanding that the basing points will be Chicago, St. Louis, Memphis, Vicksburg and New Orleans only.

"Neither two or more party fares, nor a party fare and an individual fare east or west of the gateways named, may be combined in establishing a basing fare to or from the basing point. Any party fare used to or from the basing points named must be authorized as one through party fare to or from such basing points, as the case may be. A party fare or an individual fare published as one through fare to or from the basing points named may, however, be combined with authorized individual fares east or west of such points in making through net fares between the eastern and western territories described, except that where through fares of like class are published, they shall be used in all cases in establishing through net fares; all fares used in establishing net fares must be lawfully on file with the Interstate Commerce Commission."

Petitioner shows that by the foregoing provisions the Government agreed to abide the commercial rule except for such concessions as

were therein made to the Government, and that, as the Government was not entitled as a matter of right to the use of party fares in combination with individual fares, the said agreements were binding upon the Government.

IV

That at various times during the year 1916, subsequent to June 30, 1916, your petitioner, acting upon transportation requests issued by the duly authorized agents and officers of the United States,
6 transported large numbers of persons for the United States Government, on your petitioner's own lines and in connection with your petitioner's connecting carriers. In rendering bills for such transportation your petitioner computed the charges thereof on the basis of the lawfully published tariff rates, as modified or otherwise affected by the terms and provisions of the above-mentioned military agreements. Notwithstanding the said tariff rates and provisions, and the terms of the said military agreements, your petitioner avers that the Government accounting and disbursing officers have constructed through fares by every possible combination that would produce a minimum fare, in particular using two or more party fares, or party fares and individual fares, or other combinations thereof over any intermediate points, other than those specified in the agreement, and by unusual and impracticable routes, all of said combinations being contrary to and expressly excluded by the provisions of the said military agreements relative to the use of party fares.

V

At the instance and request of duly authorized officers of the United States Army, petitioner furnished transportation to the United States Army as follows:

Date	T/reqn. W. Q.	From—	To—	No. of passgrs.
1916				
July 6	34911	Springfield, Ill	Brownsville, Texas	1, 201
July 3	34922	Springfield, Ill	San Antonia, Texas	1, 126

For said transportation petitioner, under the tariffs then in effect and under said military agreements, was entitled to be paid
7 the net cash per capita rate of $25.30 on the movement from Springfield to Brownsville and the net cash per capita rate of $18.37 on the movement from Springfield to San Antonio, and for such sums rendered its bill S–394 to the disbursing quartermaster of the United States Army, who paid the same as rendered by voucher No. 238 of Major Robert Field for May, 1917. Subse-

quently, upon an examination of the disbursing officer's account, the aforesaid payment was suspended by the Auditor for the War Department on the ground that notwithstanding said military agreements and the general prohibition against the construction of fares for through service by combinations of intermediate fares involving the use of party fares, the Government was entitled to make through rates by such combinations and over points not specified in said agreements and he caused demand to be made upon petitioner for the refund of the sum of $7,663.56, the difference between the amounts paid and the amounts due on the basis proposed by the Auditor. Petitioner refused to make said refund and thereupon the disbursing quartermaster at Washington arbitrarily deducted said sum of $7,663.56 from petitioner's subsequent bill No. S–1064 for passenger service rendered in August, 1917, and said bill S–1064, as so reduced, was paid by Captain R. G. Wood's voucher No. 5500–T of March, 1918. When notified by the zone finance office at Washington that said account No. S–1064 had been passed for payment in the reduced amount, petitioner, by letter dated January 8, 1918, notified said zone finance office that the quartermaster's warrant in settlement of said bill for the reduced amount, when received, would be accepted under protest subject to further settlement and at the same time petitioner rendered to the zone finance office its supplemental bill (S–394) for the amount of said deduction.

8

The zone finance office on February 12, 1918, returned said supplemental bill with the statement that the deduction from account S–1064 had been made in accordance with instructions by the Auditor for the War Department and that it would be necessary for any further correspondence to be had with the auditor. Thereupon, on April 9, 1918, petitioner forwarded said supplemental bill to the auditor with a statement of the previous correspondence with the zone finance office. The Auditor for the War Department, by his certificate No. 34611, dated October 9, 1918, disallowed said supplemental bill in full, "for the following named reasons; viz:

"Under the dec. of the Compt. of the Treas. dated May 10, 1918, if a through fare can be established by a combination of individual and party fares over junction points not authorized by the interterritorial military arrangements which is lower than any combination that can be established over junction and under terms authorized by said agreement, the government is entitled to the lower fare providing the benefit of the 5% allowance is waived."

The reasons assigned for the original deduction and for the subsequent disallowance of petitioner's supplemental bill were violative both of the lawful method of constructing through fares and of the terms of said military agreements.

Premises considered, petitioner prays judgment against the United States in the sum of s ven thousand six hundred sixty-three

dollars and fifty-six cents, no part of same having been paid and petitioner's right thereto not having been transferred or assigned.

WABASH RAILWAY COMPANY,
By F. CARTER POPE,
Its Attorney in Fact.

WILLIAM E. LINDEN, *Of Counsel.*

9 [Sworn to by F. Carter Pope; jurat omitted in printing.]

10 II. *General traverse*

(Filed May 12, 1923)

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

ROBERT H. LOVETT,
Assistant Attorney General.
GEO. H. FOSTER,
Special Assistant to the Attorney General.

III. *Argument and submission*

On February 7, 1924, this case was argued and submitted on merits by Mr. F. Carter Pope, for the plaintiff, and by Mr. J. H. Sheppard, for the defendant.

11 IV. *Findings of fact, conclusion of law, and opinion of the court by Campbell, Ch. J.*

(Entered Mch. 3, 1924)

This case having been heard by the Court of Claims, the court upon the evidence makes the following

FINDINGS OF FACT

I

The plaintiff is a corporation duly incorporated under the laws of the State of Indiana, and during the times of the different transactions hereinafter set forth in these findings of fact operated, and still operates, a line of railways in the State of Indiana and other States, doing a business as a common carrier of passengers and freight for hire and reward under tariffs issued by it and its connecting carriers with its concurrence, and duly published and filed with the Interstate Commerce Commission as required by law.

II

Prior to the dates of the transportation which constitutes the subject of this suit the plaintiff and other railroads of the United States entered into agreements with the Government concerning fares and allowances for the transportation of United States troops and property. The said agreements were designated as interterritorial military arrangements, western military arrangements, etc. The said agreements were executed on behalf of the carriers by the duly authorized agents of the Southwestern, the Transcontinental, the Western, the Central, the New England, and the Southeastern Passenger Associations, and the Trunk Line Association, and on behalf of the United States by the Quartermaster General of the Army, the Chief of the Bureau of Navigation of the Navy, and the quartermaster of the Marine Corps. The said military agreements were in full force and effect as late as May 20, 1920, and their provisions have been observed by the carriers generally. Under the terms of said agreements the Government has paid for transportation at rates substantially five per centum less than it would otherwise have paid.

III

One of the said agreements, designated western military arrangement, dated April 1, 1916, effective July 1, 1916, contained the following provisions:

"(9) Party fares (where authorized) apply for parties traveling together on one party ticket.

"(a) Party fares may be used as factors in constructing through net fares to and from central, trunk line, southeastern, and New England territories, in the understanding that the basing
12 points shall be Chicago, St. Louis, Memphis, Vicksburg, and New Orleans only. Neither two or more party fares, nor a party fare and an individual fare, east or west of the gateways named may be combined in establishing a basing fare to or from the basing point. Party fares used to and from basing points must be authorized as one through party fare to or from such basing points, as the case may be. A party fare or an individual fare, published as one through fare to or from the basing points named, may, however, be combined with authorized individual fares east or west of such points in making through net fares between the eastern and western territories described except that where through fares of like class are published they shall be used in all cases in establishing through net fares. All fares used in establishing net fares must be lawfully on file with the Interstate Commerce Commission.

"(b) In the construction of net military fares having origin and destination within the territory west of and including Chicago, St. Louis, Memphis, Vicksburg, and New Orleans, party fares to or from St. Louis and Kansas City only may be combined with party fares to and from those gateways only, and party fares to and from

St. Louis to and from those gateways only. Two or more party fares, nor a party fare and an individual fare, on either side of St. Louis and Kansas City, may not be combined in establishing the basing fare to or from St. Louis or Kansas City.

"(c) Net fares established in combinations made under sections (a) and (b) apply via usual one-way ticketing routes carrying short-line fares, or via routes specifically equalizing net fares so made, but shall be restricted to usually traveled routes for military traffic from starting point to destination.

"(d) Where party fares are used in the territories and upon the bases outlined in sections (a) and (b) herein, the same shall be accepted in the usual way via rate-making gateway only, but where such fares are used for any part of the distance in the territory west of Chicago, St. Louis, Memphis, Vicksburg and New Orleans, under sections (a) and (b) herein, the five per cent allowance to the Government shall not apply to any part of the through fare or proportion, either party or individual fare factor, so far as western carriers are concerned.

"(e) The intent of this agreement is that where through fares are published, no combinations of fares whatsoever are to be made, except as specified in sections (a) and (b) herein."

IV

That at various times during the year 1916, subsequent to June 30, 1916, plaintiff, acting upon transportation requests issued by the duly authorized agents and officers of the United States, transported large numbers of persons for the United States Government on plaintiff's own lines and in connection with plaintiff's connecting carriers. In rendering bills for such transportation plaintiff computed the charges thereof on the basis of the lawfully published tariff rates as modified or otherwise affected by the terms and provisions of the above-mentioned military agreements. Notwithstanding the said tariff rates and provisions, and the terms of the said military agreements, the Government accounting officers constructed through fares by using two or more party fares, or party fares and individual fares, or other combinations thereof over intermediate points, other than those specified in the agreement.

13

V

At the instance and request of duly authorized officers of the United States Army plaintiff furnished transportation to the United States Army as follows:

Date	T/rqn. W. Q.	From—	To—	No. of passgrs.
1916				
July 6	34911	Springfield, Ill	Brownsville, Tex	1,201
July 3	34922	Springfield, Ill	San Antonio, Tex	1,126

For said transportation plaintiff, under the tariffs then in effect and under said military agreements, was entitled to be paid the net cash per capita rate of $25.20 on the movement from Springfield to Brownsville and the net cash per capital rate of $18.37 on the movement from Springfield to San Antonio, and for such sums rendered its bill S–394 to the disbursing quartermaster of the United States Army, who paid the same as rendered by voucher No. 238 of Major Robert Field for May, 1917. Subsequently upon an examination of the disbursing officer's account the aforesaid payment was suspended by the Auditor for the War Department on the ground that notwithstanding said military agreements against the construction of fares for through service by combinations of intermediate fares involving the use of party fares with individual fares, the Government was entitled to make through rates by such combinations and over points not specified in said agreements, and he caused demand to be made upon plaintiff for the refund of the sum of $7,663.56, the difference between the amounts paid and the amounts due on the basis of the combinations made by the auditor. Plaintiff refused to make said refund and thereupon the disbursing quartermaster at Washington arbitrarily deducted said sum of $7,663.56 from plaintiff's subsequent bill No. S–1046 for passenger service rendered in August, 1917, and said bill S–1064 as so reduced was paid by Captain R. G. Wood's voucher No. 5500–T of March, 1918. When notified by the zone finance office at Washington that said account No. S–1064 had been passed for payment in the reduced amount, plaintiff, by letter dated January 18, 1918, notified said zone finance office that the quartermaster's warrant in settlement of said bill for the reduced amount when received would be accepted under protest subject to further settlement, and at the same time plaintiff rendered to the zone finance office its supplemental bill (S–394) for the amount of said deduction. The zone finance office on February 12, 1918, returned said supplemental bill with the statement that the deduction from account S–1064 had been made in accordance with instructions by the Auditor for the War Department and that it would be necessary for any further correspondence to be had with the auditor. Thereupon on April 9, 1918, plaintiff forwarded said supplemental bill to the auditor with a statement of the previous correspondence with the zone finance office. The Auditor for the War Department by his certificate No. 34611, dated October 9, 1918, disallowed said supplemental bill in full, "for the following-named reasons, viz:

"Under the decision of the Compt. of the Treas. dated May 10, 1918, if a through fare can be established by a combination of individual and party fares over junction points not authorized by the interterritorial military arrangements which is lower than any combination that can be established over junction and under terms authorized by said agreement, the Government is entitled to the lower fare providing the benefit of the 5% allowance is waived."

VI

The charges in plaintiff's corporate bill S–1064 were correct and proper as stated therein, and no objection to said charges was made by either the disbursing or accounting officers. The deduction of $7,663.56 was made by direction of the auditor, on account of an alleged overpayment of plaintiff's bill S–394, which had been paid in full by said disbursing officer. The balance of bill S–1064 was paid to plaintiff in March, 1918, and received by it under protest.

CONCLUSION OF LAW

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $7,663.56.

It is, therefore, adjudged and ordered that the plaintiff recover of and from the United States the sum of seven thousand six hundred and sixty-three dollars and fifty-six cents ($7,663.56).

OPINION

CAMPBELL, Chief Justice, delivered the opinion of the court:

The facts show that plaintiff having rendered certain transportation service presented its bills therefor and was paid by a disbursing officer. Afterwards the disbursing officer's accounts were checked by the auditor, who held that the disbursing officer had paid more than he should have paid, and consequently his accounts were disallowed to that extent. The amount of these overpayments was deducted from other proper bills of plaintiff. The services for which the first bills were presented occurred in 1916, more than six years before the present action was brought, and the deduction from subsequent bills were made in 1917 or afterwards. The facts do not show definitely the dates of these subsequent deductions, but do show that the services for which the subsequent bills were rendered were as late as August, 1917. At any rate, the deductions were made within six years prior to the beginning of this suit. Plainly the plaintiff's cause of action did not arise until deductions were made from its subsequent bills. Its prior bills had been paid in full. Properly speaking, its right of action is upon or because of these deductions, and this is not barred by the statute of six years, the suit having been duly instituted within that time. We have lately had occasion to point out that the statute of limitations prescribed by the transportation act, 41 Stat. 492, does not begin to run against claims which arose before its enactment until the date of the passage of the act. See Sohn *v.* Waterson, 17 Wall. 596; Schaff, Receiver of M. K. & T. Ry. Co., decided this day. We think the deductions were not upon the proper basis. See Atchison, Topeka & Santa Fe R. R. Co., 256 U. S. 205; International & Great Northern Ry., 56

C. Cls. 336. The plaintiff is entitled to judgment, and it is so ordered.

GRAHAM, Judge; HAY, Judge; DOWNEY, Judge; and BOOTH, Judge, concur.

15 V. *Judgment*

At a Court of Claims held in the city of Washington on the third day of March, A. D. 1924, judgment was ordered to be entered as follows:

The court, upon the consideration of the premises, find in favor of the plaintiff, and do order, adjudge, and decree that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of seven thousand, six hundred and sixty-three dollars and fifty-six cents ($7,663.56).

By the COURT.

VI. *History of proceedings after entry of judgment*

On April 1, 1924, the defendant filed a motion for a new trial.

On April 28, 1924, the defendant's motion for a new trial was argued and submitted by Mr. George H. Foster, for the defendant, and by Mr. F. Carter Pope, for the plaintiff.

On May 5, 1924, the court filed an order overruling defendant's motion for a new trial.

VII. *Petition for appeal*

(Filed May 22, 1924)

From the judgment rendered in the above-entitled cause on the 3rd day of March, 1924, in favor of claimant, the defendants, by their Attorney General, on the 22nd day of May, 1924, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
Assistant Attorney General.

VIII. *Order allowing petition for appeal*

On this 2nd day of June, 1924, it is ordered by the court that the defendant's application for appeal be and the same is allowed.

By the COURT.

16 In Court of Claims of the United States

[Title omitted.]

I, F. C. Kleinschmidt, assistant clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of

the findings of fact, conclusion of law, and opinion of the co
by Campbell, Ch. J.; of the judgment of the court; of the p
ceedings after entry of judgment; of the plaintiff's application
appeal; of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affi
the seal of said court at Washington City this fifth day of Ju
A. D. 1924.

[SEAL.] F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claim

(Indorsement on cover:) File No. 30,406. Court of Cla
Term No. 92. The United States, appellant, vs. Wabash Railv
Company. Filed June 11th, 1924. File No. 30,406.